

THE BRUNNER FIRM CO., LPA

A Legal Professional Association

AOR 2009-25

PRINCIPAL
RICK L. BRUNNER*

ASSOCIATES
PATRICK M. QUINN
MICHAEL E. CARLETON*†

OF COUNSEL
STEVEN M. BROWN

* ALSO ADMITTED IN PENNSYLVANIA
† ALSO ADMITTED IN NEW JERSEY

WWW.BRUNNERLAW.COM



SENDER
PATRICK M. QUINN

545 EAST TOWN STREET
COLUMBUS, OHIO 43215
(614) 241-5550, EXT. 216
(800) 776-3158, TOLL-FREE
(614) 241-5551, FAX
PMQ@BRUNNERLAW.COM

PRACTICE AREAS:
ELECTION LAW, CIVIL LITIGATION,
COMMERCIAL, BUSINESS & CORPORATE LAW

June 11, 2009

Via U.P.S. Overnight Delivery

Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

JUN 12 2009

Re: *Request for Advisory Opinion*
Jennifer Brunner Committee (FEC ID# C00459172)

Dear Ms. Duncan:

The purpose of this correspondence is to request, pursuant to 2 U.S.C. § 437f, an advisory opinion on behalf of my client, the Jennifer Brunner Committee concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and the regulations prescribed by the Federal Election Commission thereunder. Specifically, this request seeks a determination that the transaction proposed herein does not constitute an impermissible transfer of assets from a non-federal campaign committee to the principal campaign committee of a federal candidate that would be in violation of 11 C.F.R. § 110.3(d).

Background Facts:

Jennifer L. Brunner is a candidate for United States Senator from Ohio in the Democratic primary election to be held in May, 2010. The Jennifer Brunner Committee, FEC Identification Number C00459172 (the "Federal Committee") is the principal campaign committee of Ms. Brunner.

Ms. Brunner is also the current Secretary of State of Ohio, having been elected in November, 2006, and having taken office in January, 2007. While running for the office of Ohio Secretary of State, and continuing during her service in that role, Ms. Brunner maintained a "campaign committee" organized under Ohio law. See Ohio Rev. Code § 3517.01(B)(1). This committee (the "State Committee") was also named the Jennifer Brunner Committee.

Ohio law, on its face, prohibits a candidate to simultaneously maintain both a state campaign committee and a federal political committee, and previously, when a state candidate has attempted to maintain two such

committees, that matter has been the subject of controversy before the Ohio Elections Commission, a state adjudicative body. Insofar as the interpretation of the application of Ohio law is beyond the scope of this Commission's authority, it would be assumed for purposes of the opinion sought that Ohio law prohibits an individual from maintaining both a state campaign committee and a federal political committee at the same time¹. It would also be assumed for purposes of this opinion that Ohio law permits a state campaign committee "to terminate itself" so long as that committee "has no balance on hand and no outstanding obligations..." Ohio Rev. Code § 3517.10(A), but that there is no corresponding requirement under Ohio law that a state campaign committee dispose of any existing assets prior to its termination.

Because of what appears to be the prohibition of Ohio law against maintaining both a state and a federal committee at the same time, the State Committee was terminated in accordance with Ohio law on February 17, 2009. On that same date, Ms. Brunner announced her intention to run for the office of United States Senator and filed her Statement of Candidacy, and the Federal Committee filed its Statement of Organization. Upon its termination, the State Committee owned certain computers, office equipment and supplies, and similar assets. Nothing in Ohio law required that those assets be disposed of prior to the termination of the State Committee, and those assets were left on the premises of the State Committee's landlord, an Ohio professional corporation.

Proposed Transaction:

The Federal Committee desires to use those assets in the ordinary course of its operations. Because the State Committee does not exist as a matter of law, the Federal Committee cannot simply pay the State Committee for these assets. As such, the Federal Committee proposes to pay the full and fair market value of these assets, which is Fifteen-Thousand dollars (\$15,000.00) to one or more specified charitable entities recognized as such under § 170(c) of the Internal Revenue Code. This proposal is memorialized in a written agreement, effective February 18, 2009, between the Federal Committee and the State Committee's prior landlord, by which the prior landlord agreed to surrender custody of the assets to the Federal Committee, in return for the Federal Committee's agreement to pay the sum of \$15,000.00 to specified non-profit charitable entities². The charitable entities are (1) the Columbus Children's Choir, (2) ArtSafe, and (3) Mental Health America of Franklin County. The Federal Committee has placed this sum into a separate escrow account where it will remain pending the issuance of an opinion in response to this request.

The Proposed Transaction does not constitute an impermissible transfer of assets from a non-Federal to a Federal Account:

"While the Act does not specifically address transfers from non-Federal accounts to Federal accounts of candidates' principal campaign committees," Advisory Opinion 2002-08 (Vitter), 11 C.F.R. § 110.3(d) prohibits the "transfer[] of...assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee...for a federal election." In Advisory Opinion 2002-08, the Commission explained that "this regulation was intended to prohibit the transfer to a Federal committee of funds raised with respect to a State election because many states allow for contributions to state candidates which exceed the FECA's limits and source restrictions, and because "[The Commission] is also concerned about the indirect use of impermissible funds in [F]ederal elections..." *Id.* (alterations *sic*). As set forth in the original Explanation

¹ See, e.g., Ohio Rev. Code § 3517.081(A), which provides that "Each candidate shall have no more than one campaign committee for purposes of receiving contributions and making expenditures." Under Ohio law, a "candidate" is defined to include persons seeking the office of United States Senator, Ohio Rev. Code §§ 3517.01(B)(3); 3517.01(B)(9), and nothing in Ohio law specifically exempts federal political committees from the scope of these prohibitions. Further, there is no authority holding that the provisions of 2 U.S.C. § 453 operate to preempt the state law in this regard.

² This agreement calls for the total sum payments to be made in periodic installments commencing no later than October 29, 2009. As such, the Federal Committee has determined these payments constitute "regularly reoccurring administrative expense[s]" under 11 C.F.R. § 104.11(b).

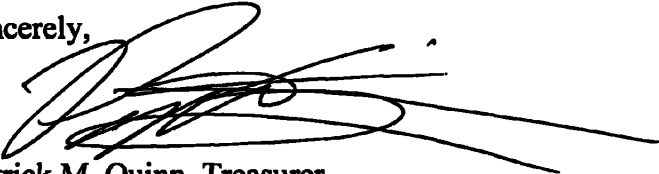
and Justification for 11 C.F.R. § 110.3(d), "the rule should not be read to proscribe the sale of assets by the state campaign committee to the federal campaign committee, so long as those assets are sold at fair market value." 58 Fed.Reg. 3474, 3475 (January 8, 1993).

The above-cited concerns addressed by the regulation's transfer prohibition are not implicated by the particular transaction proposed herein. The Commission has already approved a similar transaction with its authorization of a straightforward asset sale from a state to a federal campaign committee. *Id.* Because, under state law, a candidate cannot maintain two committees at once, the particular transaction described allows the federal committee to pay fair market value for the state committee's remaining assets by donating that amount to one or more charities.³ The particular transaction described and proposed herein is the functional equivalent of a straightforward sale by the State to the Federal Committee, except that the recipient of the Federal funds used to purchase the assets is one or more charitable organizations rather than the state committee. The surrender of fair market value in exchange for assets obviates and addresses the concerns expressed within 11 C.F.R. § 110.3(d), while allowing the candidate to honor the prohibition in state law against maintaining two committees at once. There is no reasonably available alternative recipient to whom the Federal Committee could direct its payment: the State Committee no longer exists and cannot accept funds, and the State Committee's landlord (to whom the assets were abandoned upon the former's termination) does not desire to obtain a windfall were the landlord to accept payment in exchange for assets abandoned on its premises⁴. Finally, the Act specifically permits the Federal Campaign to make contributions to charitable organizations as described in I.R.C. § 170(c), 2 U.S.C. § 439a(a)(3); 11 C.F.R. § 113.2(b), which include the recipients identified in the proposed transaction. As such, we submit that the proposed transaction does not result in an impermissible transfer of assets from a non-federal to a federal committee, and respectfully request that the Commission so opine.

Conclusion

We appreciate the attention of the Commission and its staff regarding this matter. Should you require any further information regarding this request, please do not hesitate to contact me.

Sincerely,



Patrick M. Quinn, Treasurer
Jennifer Brunner Committee

PMQ/

³ Note that making charitable contributions made with state campaign funds is a permissible expenditure purpose under state law. See Ohio Rev. Code § 3517.08(G).

⁴ Although 11 C.F.R. §116.9 generally addresses the treatment of debts owed by a political committee to a creditor that has gone out of business, that provision is facially inapplicable to the situation here. Not only has the debt at issue here not existed for a period of at least twenty-four months, but the Federal Committee desires to pair full and fair market value for the assets it has received, rather than request the Commission to declare that the debt is not payable.



Joshua Blume/FEC/US
08/04/2009 02:51 PM

To pmq@brunnerlaw.com
cc Robert Knop/FEC/US@FEC, Rosie Smith/FEC/US@FEC,
Merita Johnson/FEC/US@FEC
bcc
Subject Fw: Your Advisory Opinion Request

Hi, Mr. Quinn. Per your request today, I am re-sending the e-mail below.

Joshua Blume
Attorney, Policy Division
Federal Election Commission
999 E Street, N.W., Room 642
Washington, D.C. 20463
(202) 694-1533
jblume@fec.gov

----- Forwarded by Joshua Blume/FEC/US on 08/04/2009 02:48 PM -----



Joshua Blume/FEC/US
06/23/2009 10:36 AM

To pmq@brunnerlaw.com
cc Robert Knop/FEC/US@FEC, Rosie Smith/FEC/US@FEC,
Merita Johnson/FEC/US@FEC
Subject Your Advisory Opinion Request

Hello, Mr. Quinn. As we discussed during our conversation this past Friday, June 19, 2009, attached please find a narrative summary of the content of that conversation for your review. Please let me know if this is an accurate summary of that conversation. If you believe that it contains inaccuracies, please do not hesitate to indicate them.

Thanks very much.



Brunner Memorandum of Conversation 6-19-2009.doc

Joshua Blume
Attorney, Policy Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
(202) 694-1533

Agreement between Committee and Landlord

Because the Jennifer Brunner State committee was terminated, and because the office equipment was abandoned by that committee when it terminated, the landlord became the legal owner of the office equipment. Therefore, the Jennifer Brunner Federal committee's agreement is with the landlord.

The landlord is either the Brunner law firm or the company that owns the building containing that law firm's offices. You will find this out and notify us.

You will provide us with a copy of the February 18, 2009 agreement between the Jennifer Brunner Federal committee and the landlord.

Office Equipment

The Jennifer Brunner Federal committee has been using the office equipment. You do not believe that the Federal committee has been paying rent or compensation for its use. The Federal committee has been paying rent generally for its use of office space, but you do not believe that this payment includes payment for use of the office equipment. You will verify this and notify us.

The amount paid by the Jennifer Brunner State committee to purchase the office equipment is roughly the same as the amount quoted in your request letter as the fair market value of that equipment.



"Patrick Quinn"
<pmq@brunnerlaw.com>
08/25/2009 08:05 AM

To <JBlume@fec.gov>
cc
bcc

RECEIVED
FEDERAL ELECTION
COMMISSION

2009 AUG 25 AM 9:38

Subject RE: Your Advisory Opinion Request

OFFICE OF GENERAL
COUNSEL

History: This message has been forwarded.

Joshua:

In follow up to your email below, attached in PDF format is the agreement referenced in our advisory opinion request. Obviously, the attached answers one question in that the landlord is The Brunner Firm Co., L.P.A. You had also asked during our earlier telephone call about whether the federal campaign was paying for the use of office equipment. I believe this is covered by the attached agreement as well. In other words, the intention is to allow for the federal campaign to use the equipment and ultimately purchase the same.

I will be travelling pretty much the rest of the week, so if you need any further follow up or have any problems opening the attached, email is the best way to contact me. Thank you.

Thanks,
-Patrick Quinn
The Brunner Firm Co., L.P.A.
545 East Town Street
Columbus, Ohio 43215
Telephone: (614) 241-5550
Facsimile: (614) 241-5551

CONFIDENTIALITY NOTICE: This email message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

From: JBlume@fec.gov [mailto:JBlume@fec.gov]
Sent: Tuesday, August 04, 2009 2:52 PM
To: Patrick Quinn
Cc: rknop@fec.gov; rsmith@fec.gov; mjohnson@fec.gov
Subject: Fw: Your Advisory Opinion Request

Hi, Mr. Quinn. Per your request today, I am re-sending the e-mail below.

Joshua Blume
Attorney, Policy Division
Federal Election Commission

999 E Street, N.W., Room 642
Washington, D.C. 20463
(202) 694-1533
jblume@fec.gov

— Forwarded by Joshua Blume/FEC/US on 08/04/2009 02:48 PM —

Joshua Blume/FEC/US

To pmq@brunnerlaw.com

06/23/2009 10:36 AM

cc Robert Knop/FEC/US@FEC, Rosie Smith/FEC/US@FEC, Merita Johnson/FEC/US@FEC
Subject Your Advisory Opinion Request

Hello, Mr. Quinn. As we discussed during our conversation this past Friday, June 19, 2009, attached please find a narrative summary of the content of that conversation for your review. Please let me know if this is an accurate summary of that conversation. If you believe that it contains inaccuracies, please do not hesitate to indicate them.

Thanks very much.

Joshua Blume
Attorney, Policy Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463



(202) 694-1533 0277_001.pdf

SHORT TERM TENANCY AT SUFFERANCE AND AGREEMENT TO VACATE

Recitals and purpose. The now-dissolved Jennifer Brunner Committee, A Political Committee formerly existing under the laws of the State of Ohio, (hereinafter referred to as "Defunct Tenant") previously had a sub-lease arrangement with The Brunner Firm Co., L.P.A (hereinafter referred to as the "Landlord") pursuant to which the Defunct Tenant, utilized equipment, copiers, fax machines, internet access, Westlaw Research capabilities, conference rooms, phone lines, long distance service, electronic storage, paper, ink, furniture, filing cabinets and storage space, kitchen space and equipment, as well as various other office amenities for rent paid and accrued at irregular intervals.

One day prior to the effective date of this Short Term Tenancy at Sufferance and Agreement to Vacate (hereinafter referred to as "Agreement"), the Defunct Tenant which had the arrangement discussed in the previous paragraph, ceased to exist as a matter of law and the entity entering into this Agreement, (hereinafter referred to as "Sufferance Tenant") came into existence as Federal Election Campaign Committee, with the intent of not being a sub tenant of Landlord.

The Defunct Tenant went out of existence with its property, physical and electronic, still on the premises of the Landlord and without vacation the subject premises. Landlord views this property as abandoned and an obstruction to its use of its personal and real property.

The Sufferance Tenant desires to occupy those premises vacated by the Defunct Tenant on an *as is* basis until it can relocate which will be no later than May 1, 2009. Sufferance Tenant may not be able to pay rent during this period, as it is beginning its operations.

Short term Tenancy. Sufferance Tenant may occupy most of the premises used by the Defunct Tenant in January and February of this year and may use equipment, information storage devices (both electronic and physical) and long distance service of the landlord as well as property of the Defunct Tenant that was left behind at the latter's termination. The tenancy will be at sufferance tenant since it is not clear whether sufferance Tenant will be able to pay rent for some period of time and this short term tenancy will end no later than May 1, 2009 notwithstanding the

Sufferance Tenant's ability to pay rent at that time.

Vacation and clean up. Sufferance Tenant, as consideration for this *Agreement*, agrees to empty the subject premises of Defunct Tenant's abandoned property and information at the former's cost and no later than May 1, 2009, which shall include but not be limited to deletion of all electronic information from hard drives or electronic storage information of Landlord.

Consideration and Donation. Landlord recognizes that Tenant is receiving, in addition to occupancy rights for which no price has yet been negotiated or agreed to, valuable personal property formerly owned by the Defunct Tenant which Landlord can and does claim as abandoned property. As consideration for the Sufferance Tenant's use of the property formerly owned by the Defunct Tenant and in order to obtain a bill of sale as to Landlord's title to such property, Landlord requires that sufferance tenant must, as full consideration for such use and any eventual purchase, donate the sum of Fifteen Thousand Dollars (\$15,000.00) to one or more of the following Charities favored by Landlord:

- (1) ArtSafe;
- (2) Columbus Children's Choir;
- (3) Mental Health America of Franklin County.

Sufferance Tenant shall make the donations described above in cash beginning on October 28, 2009, and on the 28th day of every month thereafter. Sufferance Tenant shall make these donations in the amount of One Thousand Dollars (\$1,000.00) per month, until such time as the total donation of Fifteen Thousand Dollars (\$15,000.00) has been made in full. Notwithstanding the foregoing, Sufferance Tenant may pay in advance the remaining amount of the donations at its sole discretion and without penalty.

Miscellaneous. This Agreement shall be governed by the laws of the State of Ohio and a Court

sitting and venued in Franklin County Ohio. The failure of either party to enforce at any time or any period of time any of the provisions of this Agreement shall not constitute a waiver of any such provisions. This Agreement shall bind the parties hereto, their respective assigns, successors, receivers, and legal representatives of any type whatsoever, and shall not be modified unless done so in writing signed by the party sought to be bound by any such modification. The captions of the several paragraphs of this Agreement are not part of the context hereof, but are only guides or labels to assist in locating and reading the several provisions hereof. The parties hereto agree that multiple copies of this Agreement may be executed, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. All parties hereto and their respective counsel shall be deemed to have participated equally in the drafting of this Agreement and/or document, and the choice of language, terms and conditions contained herein including, but not limited to any and all exhibits created contemporaneously herewith or for the purpose of being attached hereto. For the purpose of enforcement, construction and interpretation, all such documents, language, terms, formulas, exhibits, conditions and covenants shall be deemed to be the equal work product of each party and his, her or its respective counsel, if any. This Agreement contains the entire understanding between the parties with reference to the matters contained herein, there being no terms, conditions, warranties or representations other than those contained herein, and no amendments or modifications hereto shall be valid unless made in writing and signed by both parties hereto. The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the other provisions hereof, which shall remain in full force and effect. The parties agree to execute any and all other documents, instruments or other papers, subject to the approval of their respective legal counsel, as may be necessary or desirable in the performance of the provisions of this Agreement. This Agreement shall be effective on the date it has been signed by both parties hereto as of February 18, 2009. The divisions of this Agreement into articles, sections and subsections and the use of captions and headings in connection therewith are solely for

convenience and shall have no legal effect in construing the provisions of this Agreement.


Landlord's Property. The parties will use their respective best efforts at separating Landlord's chairs, desks and tables from those of the Defunct Tenant, but, to the extent that some property of Landlord may be accidentally removed that is the property of Landlord or other occupiers of the premises at 545 East Town street, Columbus Ohio 43215, Sufferance Tenant may continue to use any such property of Landlord for the consideration herein stated but must return the same on demand and not later than December 23, 2010. As to any other persons' property so discovered to have been accidentally removed in error, Sufferance Tenant shall return the same on demand.

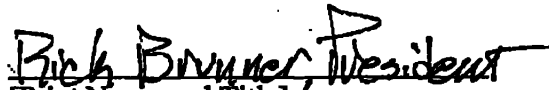
SIGNED AND ACKNOWLEDGED:

The Brunner Firm Co., LPA

The Jennifer Brunner Committee


Authorized Representative


Authorized Representative


[Print Name and Title]


[Print Name and Title]



"Patrick Quinn"
<pmq@brunnerlaw.com>
09/02/2009 01:35 PM

AOR 2009-25

To <JBlume@fec.gov>
cc
bcc
Subject RE: Your Advisory Opinion Request

RECEIVED
FEDERAL ELECTION
COMMISSION

2009 SEP -2 PM 1:42

OFFICE OF GENERAL
COUNSEL

That is correct, we believe this to be represent FMV. Please don't hesitate to let me know if you need anything further.

Thanks,
-Patrick Quinn
The Brunner Firm Co., L.P.A.
545 East Town Street
Columbus, Ohio 43215
Telephone: (614) 241-5550
Facsimile: (614) 241-5551

CONFIDENTIALITY NOTICE: This email message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

From: JBlume@fec.gov [mailto:JBlume@fec.gov]
Sent: Wednesday, September 02, 2009 1:33 PM
To: Patrick Quinn
Subject: Your Advisory Opinion Request

Hi, Mr. Quinn. Based on our telephone conversation of today, it is my understanding from you that the payment of \$1,000 per month represents a fair market rental value for the use of the office equipment with its purchase at the end.

Could you indicate whether this is an accurate statement?

Thanks very much.

Joshua Blume
Attorney, Policy Division
Federal Election Commission
999 E Street, N.W., Room 642
Washington, D.C. 20463
(202) 694-1533
jblume@fec.gov